## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Alexandria Division

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UNITED STATES OF AMERICA	) Case No. 1:12C	'R3
v.	)	
KIM DOTCOM, et al.,	)	
Defendants.	) )	

## **MOTION TO FILE SURREPLY OUT OF TIME**

The government requests permission to file its surreply in response to Kyle Goodwin's motion to unseal certain documents on December 14, 2012, two days out of time. In support of its motion, the government hereby states as follows:

- 1. On October 22, 2012, Kyle Goodwin filed a motion to unseal certain documents. On November 5, 2012, the United States responded, opposing the motion. Simultaneously, the United States filed multiple motions seeking to partially unseal certain documents related to Mr. Goodwin's motion. On November 8, 2012, the Court ordered that the documents subject Mr. Goodwin's motion be unsealed, though redacted. On November 9, 2012, Kyle Goodwin, with the consent of the United States, sought additional time to file his reply. On November 15, 2012, the Court granted Mr. Goodwin's motion and gave Mr. Goodwin until November 28, 2012, to file his reply. The Court authorized the government to file a surreply "no later than December 12, 2012."
- 2. The undersigned received the Court's order. Incorrectly believing that the provisions of Federal Rule of Criminal Procedure 45(c) applied to the Court's Order, the undersigned calendared the due date for the government's response as Friday, December 14. The undersigned was out of the country on official travel from December 9 to December 13. Thus, prior to leaving, he left instructions to

<sup>&</sup>lt;sup>1</sup> This was in fact one day earlier than the due date had Rule 45(c) applied to the Court's order.

other government counsel reviewing the motion that they need not file in his absence, because the motion

could be filed on December 14. This was error.

3. Upon returning to the United States on the afternoon of December 13, the undersigned

received an e-mail from local counsel for Mr. Goodwin inquiring whether the government intended to file

a surreply. Thinking it strange local counsel had contacted him prior to the 14th, the undersigned

reviewed the Court's order and discovered the calendaring error described above. Thus, due to this error,

the government failed to file its surreply by the date in the Court's order. Counsel for the United States

informed Mr. Goodwin of this error and the government's intention to file a motion for permission to file

out of time. Mr. Goodwin does not oppose the motion.

Thus, the United States hereby requests permission to file its surreply on December 14, 2012, two

days after the deadline ordered by the Court. The surreply is attached to this motion as Attachment A.

The undersigned apologizes to the Court for the error.

Respectfully submitted,

Neil H. MacBride

United States Attorney

By: /s/

Andrew Peterson

Assistant United States Attorneys

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of December, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF, which will then send a notification of such filing (NEF) to:

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